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106TH CONGRESS
1ST SESSION

S. 255

To combat waste, fraud, and abuse in payments for home health services provided under the Medicare program, and to improve the quality of those home health services.

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 1999

Mr. GRASSLEY (for himself and Mr. BREAUX) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To combat waste, fraud, and abuse in payments for home health services provided under the Medicare program, and to improve the quality of those home health services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Home Health Integrity Preservation Act of 1999".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Additional conditions of participation for home health agencies.
Sec. 3. Surveyor training in reimbursement and coverage policies.
Sec. 4. Surveys and reviews.

Sec. 5. Prior patient load.
Sec. 6. Establishment of standards and procedures to improve quality of services.
Sec. 7. Notification of availability of a home health agency's most recent survey as part of discharge planning process.
Sec. 8. Home health integrity task force.
Sec. 9. Application of certain provisions of the bankruptcy code.
Sec. 10. Study and report to Congress.
Sec. 11. Effective date.

SEC. 2. ADDITIONAL CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES.

(a) QUALIFICATIONS OF MANAGING EMPLOYEES.—Section 1891(a) of the Social Security Act (42 U.S.C. 1395bbb(a)) is amended by adding at the end the following:

"(7) The agency shall have—

"(A) sufficient knowledge, as attested by the managing employees (as defined in section 1126(b)) of the agency (pursuant to subsection (c)(2)(C)(iv)(II)) using standards established by the Secretary, of the requirements for reimbursement under this title, coverage criteria and claims procedures, and the civil and criminal penalties for noncompliance with such requirements; and

"(B) managing employees with sufficient prior education or work experience, according to standards determined by the Secretary, in the delivery of health care.".

(b) COMPLIANCE PROGRAM.—Section 1891(a) of the Social Security Act (42 U.S.C. 1395bbb(a)) (as amended by subsection (a)) is amended by adding at the end the following:

"(8) The agency has developed and implemented a fraud and abuse compliance program.".

(c) AVAILABILITY OF SURVEY.—Section 1891(a) of the Social Security Act (42 U.S.C. 1395bbb(a)) (as amended by subsection (b)) is amended by adding at the end the following:

"(9) The agency, before the agency provides any home health services to a beneficiary, makes available to the beneficiary or the representative of the beneficiary a summary of the pertinent findings (including a list of any deficiencies) of the most recent survey of the agency relating to the compliance of such agency. Such summary shall be provided in a standardized format and may, at the discretion of the Secretary, also include other information regarding the agency's operations that are of potential interest to beneficiaries, such as the number of patients served by the agency.".

(d) NOTICE OF NEW HOME HEALTH SERVICE, NEW BRANCH OFFICE, AND NEW JOINT VENTURE.—Section

1891(a)(2) of the Social Security Act (42 U.S.C. 1395bbb(a)(2)) is amended to read as follows:

"(2)(A) The agency notifies the agency's fiscal intermediary and the State entity responsible for the licensing or certification of the agency—

"(i) of a change in the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the agency,

"(ii) of a change in the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the agency,

"(iii) of a change in the corporation, association, or other company responsible for the management of the agency,

"(iv) that the agency is providing a category of skilled service that it was not providing at the time of the agency's most recent standard survey,

"(v) that the agency is operating a new branch office that was not in operation at the time of the agency's most recent standard survey, and

"(vi) that the agency is involved in a new joint venture with other health care providers or other business entities.

"(B) The notice required under subparagraph (A) shall be provided—

"(i) for a change described in clauses (i), (ii), and (iii) of such subparagraph, within 30 calendar days of the time of the change and shall include the identity of each new person or company described in the previous sentence,

"(ii) for a change described in clause (iv) of such subparagraph, within 30 calendar days of the time the agency begins providing the new service and shall include a description of the service,

"(iii) for a change described in clause (v) of such subparagraph, within 30 calendar days of the time the new branch office begins operations and shall include the location of the office and a description of the services that are being provided at the office, and

"(iv) for a change described in clause (vi) of such subparagraph, within 30 calendar days of the time the agency enters into the joint venture agreement and shall include a description of the joint venture and the participants in the joint venture.".

SEC. 3. SURVEYOR TRAINING IN REIMBURSEMENT AND COVERAGE POLICIES.

Section 1891(d)(3) of the Social Security Act (42 U.S.C. 1395bbb(d)(3)) is amended—

(1) by striking "relating to the performance" and inserting "relating to—

"(A) the performance";

(2) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(B) requirements for reimbursement and coverage of services under this title.".

SEC. 4. SURVEYS AND REVIEWS.

(a) ADDITIONAL REQUIREMENTS FOR SURVEY.—Section 1891(c)(2)(C) of the Social Security Act (42 U.S.C. 1395bbb(c)(2)(C)) is amended—

(1) in clause (i)(I)—

(A) by striking "purpose of evaluating" and inserting "purpose of—

"(aa) evaluating"; and

(B) by adding at the end the following:

"(bb) evaluating whether the individuals are homebound for purposes of qualifying for receipt of benefits for home health services under this title; and";

(2) in clause (ii), by striking "and" at the end;

(3) in clause (iii), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(iv) shall include—

"(I) an assessment of whether the agency is in compliance with all of the conditions of participation and requirements specified in or pursuant to section 1861(o), this section, and this title;

"(II) an assessment that the managing employees (as defined in section 1126(b)) of the agency have attested in writing to having sufficient knowledge, as determined by the Secretary, of the requirements for reimbursement under this title, coverage criteria and claims procedures, and the civil and criminal penalties for noncompliance with such requirements; and

"(III) a review of the services provided by subcontractors of the agency to ensure that such services are being provided in a manner consistent with the requirements of this title.".

(b) ADDITIONAL EVENTS TRIGGERING A SURVEY.—Section 1891(c)(2)(B) of the Social Security Act (42 U.S.C. 1395bbb(c)(2)(B)) is amended—

(1) by striking "and" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting a comma; and

(3) by adding at the end the following:

"(iii) shall be conducted not less than annually for the first 2 years after the initial standard survey of the agency,

"(iv) after the agency's first 2 years of participation under this title, shall be conducted within 90 calendar days of the date that the agency notifies the Secretary that it is providing a category of skilled service that the agency was not providing at the time of the agency's most recent standard survey,

"(v) if the agency is operating a new branch office that was not in operation at the time of the agency's most recent standard survey, shall be conducted within the 12-month period following the date that the new branch office began operations to ensure that such office is providing quality care and that it is appropriately classified as a branch office, and shall include direct scrutiny of the operations of the branch office, and

"(vi) shall be conducted on randomly selected agencies on an occasional basis, with the number of such surveys to be determined by the Secretary.".

(c) REVIEW BY FISCAL INTERMEDIARY.—Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end the following:

"(m) An agreement with an agency or organization under this section shall require that the agency or organization conduct a review of the overall business structure of a home health agency submitting a claim for reimbursement for home health services, including any related organizations of the home health agency.".

SEC. 5. PRIOR PATIENT LOAD.

Section 1891 of the Social Security Act (42 U.S.C. 1395bbb) is amended by adding at the end the following:

"(h) PRIOR PATIENT LOAD.—

"(1) IN GENERAL.—The Secretary shall not enter into an agreement for the first time with a home health agency to provide items and services under this title unless the Secretary determines that, before the date the agreement is entered into, the agency—

"(A) had been in operation for at least 60 calendar days; and

"(B) had at least 10 patients during that period of prior operation.

"(2) EXCEPTIONS.—

"(A) BENEFICIARY ACCESS.—If the Secretary determines appropriate, the Secretary may waive the requirements of paragraph (1) in order to establish or maintain beneficiary access to home health services in an area.

"(B) CHANGE OF OWNERSHIP.—The requirements of paragraph (1) shall not apply to a home health agency at the time of a change in ownership of such agency.".

SEC. 6. ESTABLISHMENT OF STANDARDS AND PROCEDURES TO IMPROVE QUALITY OF SERVICES.

(a) IN GENERAL.—Section 1891 of the Social Security Act (42 U.S.C. 1395bbb) (as amended by section 5) is amended by adding at the end the following:

"(i) ESTABLISHMENT OF STANDARDS AND PROCEDURES.—

"(1) SCREENING OF EMPLOYEES.—The Secretary shall establish procedures to improve the background screening performed by a home health agency on individuals that the agency is considering hiring as home health aides (as defined in subsection

(a)(3)(E)) and licensed health professionals (as defined in subsection (a)(3)(F)).

"(2) COST REPORTS.—The Secretary shall establish additional procedures regarding the requirement for attestation of cost reports to ensure greater accountability on the part of a home health agency and its managing employees (as defined in section 1126(b)) for the accuracy of the information provided to the Secretary in any such cost reports.

"(3) MONITORING AGENCY AFTER EXTENDED SURVEY.—The Secretary shall establish procedures to ensure that a home health agency that is subject to an extended (or partial extended) survey is closely monitored from the period immediately following the extended survey through the agency's subsequent standard survey to ensure that the agency is in compliance with all the conditions of participation and requirements specified in or pursuant to section 1861(o), this section, and this title.

"(4) ADDITIONAL AUDITS.—

"(A) IN GENERAL.—

"(i) STANDARDS.—The Secretary shall establish objective standards regarding the determination of—

"(I) whether an agency is a home health agency described in subparagraph (B); and

"(II) the circumstances that trigger an audit for a home health agency described in subparagraph (B), and the content of such an audit.

"(ii) INFORMATION.—In establishing standards under clause (i), the Secretary shall ensure that the individuals performing the audits under this section are provided with the necessary information, including information from intermediaries, carriers, and law enforcement sources, in order to determine if a particular home health agency is an agency described in subparagraph (B) and whether the circumstances triggering an audit for such an agency has occurred.

"(B) AGENCY DESCRIBED.—A home health agency is described in this subparagraph if it is an agency that has—

"(i) experienced unusually rapid growth as compared to other home health agencies in the area and in the country;

"(ii) had unusually high utilization patterns as compared to other home health agencies in the area and in the country;

"(iii) unusually high costs per patient as compared to other home health agencies in the area and in the country;

"(iv) unusually high levels of overpayment or coverage denials as compared to other home health agencies in the area and in the country; or

"(v) operations that otherwise raise concerns such that the Secretary determines that an audit is appropriate.

"(5) BRANCH OFFICES.—

"(A) SURVEYS.—The Secretary shall establish standards for periodic surveys of branch offices of a home health agency in order to assess whether the branch offices meet the Secretary's national criteria for branch office designation and for quality of care. Such surveys shall include home visits to beneficiaries served by the branch office (but only with the consent of the beneficiary).

"(B) UNIFORM NATIONAL DEFINITION.—The Secretary shall establish a uniform national

definition of a branch office of a home health agency.

"(6) CERTAIN QUALIFICATIONS OF MANAGING EMPLOYEES.—The Secretary shall establish standards regarding the knowledge and prior education or work experience that a managing employee (as defined in section 1126(b)) of an agency must possess in order to comply with the requirements described in subsection (a)(7).

"(7) CLAIMS PROCESSING.—

"(A) IN GENERAL.—The Secretary shall establish standards to improve and strengthen the procedures by which claims for reimbursement by home health agencies are identified as being fraudulent, wasteful, or abusive.

"(B) PROCEDURES.—The standards established by the Secretary pursuant to subparagraph (A) shall include, to the extent practicable, standards for a minimum number of—

"(i) intensive focused medical reviews of the services provided to beneficiaries by an agency;

"(ii) interviews with beneficiaries, employees of the agency, and other individ-

uals providing services on behalf of the agency; and

"(iii) random spot checks of visits to a beneficiary's home by employees of the agency (but only with the consent of the beneficiary).

"(C) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of the Home Health Integrity Preservation Act of 1999, the Secretary shall submit a report to Congress containing a detailed description of—

"(i) the current levels of activity by the Secretary with regard to the reviews, interviews, and spot checks described in subparagraph (B); and

"(ii) the Secretary's plans to increase those levels pursuant to the procedures described in subparagraphs (A) and (B).

"(8) EXPANSION OF FINANCIAL STATEMENT.—The Secretary shall establish procedures to expand the financial statement audit process to include compliance and integrity reviews.".

(b) EFFECTIVE DATE.—By not later than 180 calendar days after the date of enactment of this Act, the Secretary shall establish the standards and procedures de-

scribed in paragraphs (1) through (8) of section 1891(i) of the Social Security Act (42 U.S.C. 1395bbb(i)) (as added by subsection (a)) by regulation or other sufficient means.

SEC. 7. NOTIFICATION OF AVAILABILITY OF A HOME HEALTH AGENCY'S MOST RECENT SURVEY AS PART OF DISCHARGE PLANNING PROCESS.

Section 1861(ee)(2)(D) of the Social Security Act (42 U.S.C. 1395x(ee)(2)(D)) (as amended by section 4321(a) of the Balanced Budget Act of 1997) is amended—

(1) by striking "including the availability" and inserting "including—

"(i) the availability"; and

(2) by inserting before the period the following: "; and

"(ii) the availability of (and procedures for obtaining from a home health agency) a summary document described in section 1891(a)(9)".

SEC. 8. HOME HEALTH INTEGRITY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish within the Office of the Inspector General of the Department of Health and Human Services

a home health integrity task force (in this section referred to as the "Task Force").

(b) DIRECTOR.—The Inspector General of the Department of Health and Human Services shall appoint the Director of the Task Force.

(c) DUTIES.—The Task Force shall target, investigate, and pursue any available civil or criminal actions against individuals who organize, direct, finance, or are otherwise engaged in fraud in the provision of home health services (as defined in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m))) under the medicare program under such Act.

(d) OUTSIDE AGENCIES AND ENTITIES.—In carrying out the duties described in subsection (c), the Task Force shall work in coordination with other Federal, State, and local agencies, including the Health Care Financing Administration, and with private entities. All Federal, State, and local employees and all private entities are encouraged to provide maximum cooperation to the Task Force.

SEC. 9. APPLICATION OF CERTAIN PROVISIONS OF THE BANKRUPTCY CODE.

(a) RESTRICTED APPLICABILITY OF BANKRUPTCY STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PROVISIONS TO CERTAIN MEDICARE DEBTS.—Title XI of the

Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1143 the following:

"APPLICATION OF CERTAIN PROVISIONS OF THE BANKRUPTCY CODE

"SEC. 1144. (a) CERTAIN MEDICARE ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—The commencement or continuation of any action against a debtor (as defined in subsection (d)) under this title or title XVIII, including any action or proceeding to exclude or suspend such debtor from program participation, assess civil monetary penalties, recoup or set off overpayments, or deny or suspend payment of claims shall not be subject to a stay under section 362(a) of title 11, United States Code.

"(b) CERTAIN MEDICARE DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—A debt owed to the United States or to a State by a debtor for an overpayment under title XVIII, or for a penalty, fine, or assessment under this title or title XVIII, shall not be dischargeable under any provision of title 11, United States Code.

"(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—Payments made to repay a debt to the United States or to a State by a debtor with respect to items and services provided, or claims for payment made for such items and services, under title XVIII (including repayment of an overpayment), or to pay a penalty, fine, or assess-

ment under this title or title XVIII, shall be considered final and not avoidable transfers under section 547 of title 11, United States Code.

"(d) DEBTOR DEFINED.—In this section, the term 'debtor' means a provider of services (as defined in section 1861(u)) that has commenced a case under title 11, United States Code.".

(b) MEDICARE RULES APPLICABLE TO BANKRUPTCY PROCEEDINGS OF A MEDICARE PROVIDER OF SERVICES.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following:

"APPLICATION OF PROVISIONS OF THE BANKRUPTCY CODE

"SEC. 1897. (a) USE OF MEDICARE STANDARDS AND PROCEDURES.—Notwithstanding any provision of title 11, United States Code, or any other provision of law, in the case of claims by a debtor (as defined in section 1144(d)) for payment under this title, the determination of whether the claim is allowable, and of the amount payable, shall be made in accordance with the provisions of this title, title XI, and implementing regulations.

"(b) NOTICE TO CREDITOR OF BANKRUPTCY PETITIONER.—In the case of a debt owed by a debtor (as so defined) to the United States with respect to items and services provided, or claims for payment made, under this

title (including a debt arising from an overpayment or a penalty, fine, or assessment under title XI or this title), the notices to the creditor of bankruptcy petitions, proceedings, and relief required under title 11, United States Code (including under section 342 of that title and rule 2002(j) of the Federal Rules of Bankruptcy Procedure), shall be given to the Secretary. Provision of such notice to a fiscal agent of the Secretary shall not be considered to satisfy this requirement.

"(c) TURNOVER OF PROPERTY TO THE BANKRUPTCY ESTATE.—For purposes of section 542(b) of title 11, United States Code, a claim for payment under this title shall not be considered to be a matured debt payable to the estate of a debtor (as so defined) until such claim has been allowed by the Secretary in accordance with procedures established under this title.".

SEC. 10. STUDY AND REPORT TO CONGRESS.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study on all matters relating to the appropriate home health services to be provided under the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to individuals with chronic conditions.

(2) MATTERS STUDIED.—The matters studied by the Secretary shall include—

(A) methods to strengthen the role of a physician in developing a plan of care for a beneficiary receiving home health benefits under this title; and

(B) the need for an individual or entity (other than the home health agency or the beneficiary's physician) to have responsibility for approving the type and quantity of home health services provided to the beneficiary.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under subsection (a). The Secretary shall include in the report such recommendations regarding the utilization of home health services under the Medicare program as the Secretary determines to be appropriate.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the expiration of the date that is 180 calendar days after the date of enactment of this Act.

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